IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 101.

JAMES T. WORMLEY, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

STATEMENT OF CASE.

This is a writ of error from the Court of Appeals of the District of Columbia.

On September 24, 1899, the plaintiff in error filed in the supreme court of the District of Columbia a petition praying for the writ of certiorari against the District of Columbia. The petitioner sets up, among other things, that some time prior to the 21st day of July, 1896, the District of Columbia, without authority in law, entered upon the tax and special assessment records in its custody certain illegal taxes against sublot 116, in square 274, for the sum of sixty-five dollars and twenty-four cents ($65.24), with interest at the rate of ten (10) per cent. per annum, said charge purporting to be levied for the cost of the following item: "Curb and sidewalk on U street," charged in the name of William T. Walker and Samuel Wimsatt, said tax being levied

for special improvements under acts of Congress approved August 6, 1890, and March 3, 1893; that afterwards the petitioner filed his petition for writ of certiorari for the purpose of having said tax quashed, and, upon review of the records, the supreme court of the District of Columbia, by its judgment in law number 39839, quashed the said taxes on the ground that said assessment was substantially defective, and that the Commissioners of the District of Columbia had no right to levy it; that, not regarding said judgment and wrongful assessment, and not regarding the fact that the said assessment did not come within the special-assessment law, in that said assessment was not quashed upon the grounds that said assessment was not properly authenticated, or that there was a defective return of notice, the Commissioners of the District of Columbia did enter upon their records a so-called reassessment of said charge against said sublot for exactly the same amount, and petitioner in his petition avers that said reassessment is illegal, unlawful, and that the Commissioners of the District of Columbia *had no authority in law to make said reassessment.*

Whereupon the writ of certiorari was issued, and the return shows that there was merely a recasting of certain figures by one J. W. Daniels, special assessment clerk of the District of Columbia; and then there was filed a somewhat curious document signed by the Commissioners themselves, which attempted to do away with the necessary records by making up statements which are not warranted by the record in this cause (R., p. 6). Upon this return a motion was made to quash the reassessment and granted, and the supreme court of the District of Columbia adjudged that said alleged reassessment was illegal, "*because said assessment and reassessment complained of were made without authority in law* and in excess of the jurisdiction of the Commissioners of the District of Columbia." An appeal was taken to the Court of Appeals of the District of Columbia, and that court, on the second day of May, 1899, reversed the decision of the court below, vacated the judg-

ment, and ordered the petition to be dismissed, and then the writ of error was sued out to this court.

ASSIGNMENT OF ERRORS.

First. The Court of Appeals erred in reversing the judgment of the supreme court of the District of Columbia and dismissing the petition in certiorari.

Second. The Court of Appeals erred in not affirming the judgment of the supreme court of the District of Columbia.

Third. The Court of Appeals erred in not holding the return of the defendant in error insufficient.

Fourth. The Court of Appeals erred in not holding the acts of Congress of August 6, 1890, of August 7, 1894, and of April 24, 1896, unconstitutional and the proceedings had thereunder null and void.

Fifth. That the Court of Appeals erred in holding the said reassessment in this case valid and not an infringement of the constitutional rights of petitioner, in depriving him of his property without due process of law and without just compensation.

ARGUMENT.

The errors assigned in this cause involve the validity of the several acts of Congress mentioned above, as well as the construction of the same. The act of Congress of August 6, 1890 (26 Statutes at Large, 296), reads as follows:

"That hereafter the Commissioners of the District of Columbia are authorized to order such above-enumerated work (repair and improvement of alleys and sidewalks) as in their opinion is necessary for the public health, safety and comfort and to pay the total costs of such work out

of the appropriations therefor, *one-half of such work, including material and labor, shall be charged against and become a lien upon the property abutting upon the line of such improvement and shall be levied pro rata according to the linear frontage of each lot or part of lot abutting upon such improvement.*"

The original assessment was made under this act, and by the decision of the Court of Appeals the proceedings had under this act were held null and void and unconstitutional and of no effect (Allman *vs.* District of Columbia, 3 App. Cases D. C., 8). Then was passed the act of August 7, 1894 (28 Statutes at Large, 247), which reads as follows:

"For assessment and permit work, one hundred and sixty-five thousand dollars ($165,000) * * * and *one-half the cost thereof shall be assessed against the abutting property* and collected as herein provided for assessment and permit work. Provided that hereafter the Commissioners of the District of Columbia are authorized and empowered, whenever in their judgment the public health, safety or comfort require it, * * * to improve and repair alleys and sidewalks and to construct sewers and sidewalks in the District of Columbia of such form and material as they may determine, and to pay the total costs of such work from appropriations for assessment and permit work.

"Said Commissioners shall give notice by advertisement twice a week for two weeks in some newspaper published in the city of Washington, of any assessment-work proposed to be done by them under this act, designating the location and the kind of work to be done; specifying the kinds of material to be used, the estimated cost of the improvement and fixing a time and place, when and where the property-owners to be assessed can appear and present objections thereto, and for hearing thereof. *One-half of the total cost of assessment-work herein provided for, including the expenses of the assessment, shall be charged against and become a lien upon abutting property, and an assessment therefor shall be levied pro rata according to the linear frontage of said property.*"

On account of the suggestion in the case of The District of Columbia *vs.* Burgdorf, 6 App. Cases D. C., 481, in which

the court, after holding the water-main assessment invalid, said:

"The only suggestion that we can make is that a curative act of Congress be procured extending the time for assessments and notice."

There was passed on April 24, 1896 (29 Statutes at Large, 98), an act known as the reassessment act, which is as follows:

"That the Commissioners of the District of Columbia be, and they are hereby, authorized and directed, in all cases where general taxes or assessments for local improvements in the District of Columbia may hereafter be quashed, set aside or declared void by the supreme court of said District, *by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied by reason of such tax or assessment not having been authenticated by the proper officer, or of a defective return of service of notice, or for any technical reason other than the right of the public authorities to levy the tax or make the improvement in respect of which the assessment was levied*, to reassess the lot or parcel of ground in respect of such general taxes or the improvement mentioned in such defective assessment, with power to collect the same according to existing laws relating to the collection of assessments and taxes: *Provided*, That in cases where such taxes or assessments shall be quashed or declared void by said court, for the reasons hereinbefore stated, the reassessment herein provided for shall be made within 90 days after the judgment or decree of said court quashing or setting aside such taxes or assessments and any amount heretofore paid upon an assessment which has been declared void shall be credited the owner upon the reassessment made under the provision of this bill."

Looking at this reassessment act, it will be found that it is very vague and uncertain in its language. It provides for no method of reassessment unless we construe it, as it was construed by the Court of Appeals, to mean that the reassessment was to be *according to existing laws relating to the collection of assessments and taxes.* Upon reading the

act it will be seen that it hardly admits of this construction. The statement "according to existing laws" relating to the collection of assessments and taxes merely applies to the power of collecting the assessments, and nowhere in the act was it provided or is it stated the manner in which the reassessment shall be made. The Commissioners of the District of Columbia proceeded to merely recast the former assessment which was under the act of 1890, and in their return in case No. 101 they charge against the property *one-half of the cost of the assessment*, whereas in case No. 102, which is not printed and in which there is a printed stipulation stating that that case is similar to this case, with the exception that the reassessment was one-third of the alleged cost of the improvement, *they charge the property with one-third the cost of assessment.*

Now the Commissioners claim that this reassessment was made in accordance with the provisions of the act of Congress of August 7, 1894.

We will first consider the assignments of error that involve the validity of these several acts of Congress. It is only necessary to say that it is our contention that both the original act, under which this assessment was made, and the act of 1894 and the reassessment act, under which the present assessment was made, are unconstitutional, null, and void, because they lay down a rule for special assessment and reassessment without any regard to the benefit of the property assessed. The several acts of Congress provide for an assessment or reassessment of property by a rule *that does not take into consideration the benefit accruing to the property itself*, and whatever may have been the decisions of different courts in regard to this question, the question itself is now well settled by this court in the late case of The Town of Norwood *vs.* Baker, 172 U. S., 269, where this court lays down the proposition that it makes no difference whether the amount of the assessment levied may not be exactly the same as the one that

would be levied under a rule that will take into consideration the benefit done to the property, still the assessment is void, because the rule or law under which it is made is unconstitutional and of no effect, and the Court of Appeals of the District of Columbia, in a late case of Wight *et al. vs.* Davidson *et al.*, which was lately argued in this court, being No. 283 of October term, 1900, have since their decision in this case considered that the case of Norwood *vs.* Baker lays down an absolute rule upon the matter of special assessment, and thus, in speaking of Norwood *vs.* Baker, say:

"The assessment was in itself an illegal one, because it rested upon a basis that excluded any consideration of benefits. A decree enjoining the whole assessment was therefore the only appropriate one. * * * The present case is one of illegal assessment under a *rule or system* which, as we have stated, violated the Constitution, in that the entire cost of the street improvement was imposed upon the abutting property by the front foot, *without any reference to special benefits.*"

And in this cause there is imposed upon the abutting property by the front foot one-half of the costs of the street improvement, together with cost of assessment, without any reference to special benefit, and upon an examination of the authorities in this court it will be found that nowhere do they hold that an arbitrary assessment can be made against property without any regard to the benefit accruing to the property. It will be noticed that the Court of Appeals take a different view of Norwood *vs.* Baker in the case of Wight *et al. vs.* Richardson *et al.* from the view expressed in this case. Here they merely say that they do not think that Norwood *vs.* Baker applies, and rely upon the case of Parsons *vs.* District of Columbia, 170 U. S., 45–52, but it is insisted that the Parsons case has no application to the case of special assessments. In Norwood *vs.* Baker, speaking of that case, the Supreme Court say:

"The power conferred upon the Commissioners (in that case) was, not to make assessments upon abutting properties, nor to give notice to the property-owners of such assessments, but to determine the question of the propriety and necessity of laying water mains and water pipes, and of erecting fire plugs and hydrants, and their *bona fide* exercise of such power cannot be reviewed by the courts."

Following the decision of the Supreme Court of the United States in the Norwood *vs.* Baker case, courts all over the country have held special assessments void and unconstitutional where they were made *without any regard to the benefit conferred on the property.*

An act that provides that *the cost or a proportion of the cost* of the street improvement shall be assessed against abutting property *by the frontage measurement, without any regard to special benefits, and providing for no notice and hearing to ascertain and determine the actual benefits specially received by the land-owners by reason of such improvement,* the only notice and hearing being one to revise and correct the report and estimate of the engineer to make it conform to the prescribed basis of assessment, violates the constitutional provisions against the taking of private property without just compensation and is a denial of the equal protection of the law.

Charles *vs.* The City of Marion, 100 Fed. Rep., 538.
Lyons *vs.* Tonawanda, 98 Fed Rep., 361.

The legislature has no power to assess property for a local improvement without giving *the property-owners an opportunity to be heard on the question whether the improvement for which the assessment was levied was a benefit to the property.*

Hutcheson *et al. vs.* Storrie, 92 Tex., 685.
Sears *vs.* Boston, 53 N. E. Rep., 876.
City of Detroit *vs.* Court, 112 Mich., 588.
Loeb *vs.* County, 91 Fed. Rep., 37.
Walsh *vs.* Baron, 55 N. E. Rep., 164.

Nor does the case of Mattingly *vs.* The District of Columbia, 97 U. S., 687, in any way conflict with the above decisions. In that case, which upheld the special assessment made, the act under which the same was levied prescribed that the assessment for special improvements could be made upon property adjoining which was *especially benefited* by levying a reasonable proportion of the cost, not in any case to exceed one-third of such cost. It will be seen that in this case the assessment was to be made upon property specially benefited, and the act fixed the maximum amount. In the case here under consideration, an arbitrary amount is set without any regard to the benefit, and no notice is provided or any provision made for allowing property-owners to come in to question whether or not the special improvement is a benefit to their property, and, if so, in what amount. This is in plain violation of the Constitution of the United States, and comes within the rule laid down in Norwood *vs.* Baker, and therefore the reassessment made in this case, as well as that made in number 102, should be held invalid and of no effect.

On an examination of the several acts set out in this brief and under which it is alleged this assessment was made it will be seen that none of them provide for the assessment against the abutting property *according to the benefit accruing to that property*, and that none of them provide for any notice or process on the property-owner for the purpose of ascertaining the benefit bestowed on the property by the assessment; that the act of April 24, 1896, is uncertain in its provisions, in that it provides for absolutely nothing except a supposed reassessment, without setting out how the same shall be made or what notice, if any, shall be given under this act, and there is no ordinance or public regulation requiring any notice of reassessment. The record is silent as to any notice given to the property-owners for this reassessment. It merely set out a publication under the act of August 7, 1894, without showing that the property-owner

should suppose that the Commissioners were going to proceed by publication under that act, and, as stated before, the order of publication as it appears in the record provides no notice which would in any way benefit the property-owners or permit them to inquire into questions of the extent of the benefit conferred upon their property.

On an examination of the record it will be seen that the District of Columbia in its returns failed to return the record in its custody and control in regard to the original as well as the reassessment, and that in case number 101 the assessment is for one-half of the full cost of the improvement, while in number 102 the assessment is for one-third of the value of the improvement. (See stipulation filed.)

Considering the return as containing all that would be proper for the record to show in these cases, it is contended on the part of the plaintiffs in error that the Commissioners of the District of Columbia had no authority, independent of the constitutional question, to make this assessment.

The act does not give them the right to reassess in all cases, but it says that a reassessment may be made where the original assessment is declared void "by reason of an imperfect or erroneous description of the lot or parcel of ground against which same shall have been levied by reason of such tax or assessment not having been authenticated by the proper officer, or of a defective return of service of notice, or for any technical reason other than the right of public authorities to levy the tax or make the improvement in respect of which the assessment was levied." It will be observed that this original assessment was quashed by reason of the fact that the Commissioners of the District of Columbia had no authority or jurisdiction to levy the tax or make the assessment because they proceeded without due process of law, and their action was unconstitutional, null, and void. The assessment itself was not merely null and void, but the whole action of the Commissioners of the District of Colum-

bia was null and void, and it was attempting to take the property of parties interested without due process of law (Allman *vs.* District of Columbia, 3 App. D. C., 8).

Unless the Commissioners had jurisdiction in the original assessment, they have no right to make a reassessment. Jurisdiction implies more than merely jurisdiction of the subject-matter, but also jurisdiction of the parties and procedure according to rules of law; so, even if the Commissioners had in themselves the right to make this assessment, still if they failed to acquire jurisdiction over the parties, or to proceed according to due process of law, they had no right whatever to make the assessment originally made in these cases.

Again, the law is plain in setting out when a reassessment can be made. It states specific cases, none of which go to the question of jurisdiction, and among which are included the defective return of the service of notice, and then the law says, "or for any technical reason other than the right of the public authorities to levy the tax or make the improvement," thereby showing that if the assessment was quashed for merely a technical defect a reassessment can be made, *but leaving it plain and clear that where the defect was jurisdictional, or where the party was by the assessment deprived of his property without due process of law, no reassessment can be made.* When we look at the decision of this court, and also look at the statute here involved, we find that the law was made at the suggestion of this court when, in deciding the case of District of Columbia *vs.* Burgdorf (the water-main case), 6 App. D. C., 465, the court suggested that relief should be had by applying to Congress, and asking that the District be permitted to reassess the tax quashed in cases where there was merely a technical defect; but the action in that case on the part of the Commissioners was within their jurisdiction and did not deprive any one of his property without due process of law.

For the reasons here stated, the principal one being the constitutional question involved, it is insisted that the Court of Appeals erred in reversing the judgment of the supreme court of the District of Columbia, and that the decision of the Court of Appeals should be reversed and the judgment of the supreme court of the District of Columbia confirmed.

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